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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte Baumeister et al.

Application Serial No. 10/624,353
Filed: July 22, 2003

Date: May 15, 2008
Examiner: Scott B. Christensen
Group Art Unit: 2144

APPELLANT'S REPLY BRIEF (37 C.F.R. 41.41(a)(1))

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant hereby submits this Reply Brief under 37 C.F.R. 41.41(a)(1), in response to the Examiner's Answer mailed March 17, 2008.

Argument

Although the Examiner's Answer mailed March 17, 2008 has not altered the Appellant's position – i.e., that claims 1-7 and 11-18 are patentable over the cited art references, and the rejections thereof under 35 U.S.C. 102(e) and 35 U.S.C. 103(a) should be reversed for the reasons set forth in the Appeal Brief filed December 19, 2007 – the Appellant feels compelled to respond to an aspect of the Examiner's Answer involving a new interpretation of claim language that was not specifically addressed in the Appeal Brief. More specifically, the Examiner's Answer sets forth a new interpretation with respect to the phrases "receiving a request for a particular media file from a client computer" and "intercepting a download request for the actual media file" used in claim 1 (identical or nearly identical phrases are also used in independent claims 11 and 18). In the Examiner's Answer, the Examiner attempts to cast doubt on the meaning of these abundantly clear phrases. The Examiner's new interpretation is reproduced below, followed by the Appellant's response.

The Examiner's Answer at page 8, lines 5-15, states:

> **Issue 1:** Appellant argues on pages 14-17 of the Appeal Brief that Klemets does not disclose certain features of claim 1. More specifically, Appellant focuses on "receiving a request for a particular media file from a client computer".
>
> First, it is noted that the phrase "receiving a request for a particular media file from a client computer" does not necessarily mean that the request is to download the particular media file. This point is similar to an argument presented in the Advisory Action mailed on 10/15/2007 on page 3, which Appellant did not ever address, even in the Appeal Brief. Even the phrase "intercepting a download request for the actual media file" does not necessarily mean that the request is a request to download the actual media file. In both cases, the phrases "for a particular media file" and "for the actual media file" could mean either the request is *to acquire, or download*, the media file (which is the interpretation that Appellant is apparently relying upon), or that the request is *with regard or respect to* a particular media file (which is clearly within the scope of the instant claims, and is the interpretation relied upon by the Examiner).
>
> According to MPEP 2111, claims must be given their broadest reasonable interpretation consistent with the specification. The instant application makes references to downloading the actual file, as Appellant argues, as well as requests to stream a media file (See, for example, the instant specification, page 4, paragraph 1). Thus, the broadest reasonable interpretation consistent with the specification of the phrase "for a particular media file" is "with regard or respect

> to a particular media file." As the metadata file is a file that includes data about the media file, a request to obtain the metadata file is "with regard or respect to a particular file."
>
> Accordingly, the interpretation that must be given to the instant claims is broader than the interpretation that Appellant argues with respect to claim 1. As such, the DESCRIBE method, as in Klemets, may include the streaming media header (metadata), and the DESCRIBE method is made with regard or respect to the particular media file that the user wishes to stream, and is thus for the particular media file.

The claim phrases referred to by the Examiner in the paragraphs above are interrelated. More specifically, in each of the independent claims (i.e., claims 1, 11 and 18), the latter phrase (i.e., intercepting a download request for the actual media file") further defines the former phrase (i.e., "receiving a request for a particular media file from a client computer"). Each of claims 1, 11 and 18 recites "the step of receiving a request for a particular media file from a client computer comprises the steps of: intercepting a download request for the actual media file and reinterpreting said download request into a request for receiving a corresponding metafile". Hence, the step of receiving a request for a particular media file from a client computer, as recited in each of claims 1, 11 and 18, includes (inter alia) the step of "intercepting a download request for the actual media file". (As further recited in these claims, the step of receiving a request for a particular media file from a client computer also includes the step of "reinterpreting the download request into a request for receiving a corresponding metafile"). Thus, the claims positively and unambiguously define the request for a particular media file (received from a client computer as per the former claim phrase) as a download request for the actual media file (intercepted as per the latter claim phrase). These interrelated claim phrases are <u>not</u> met by a request "with regard or respect to" a particular media file (i.e., the interpretation relied on by the Examiner, but found nowhere in the claims).

The interpretation relied on by the Examiner is unreasonably broad in view of the clear and unambiguous meaning of the claim phrases, and is inconsistent with description of the invention in the specification. In an attempt to justify his interpretation, the Examiner points to the specification at page 4, paragraph 1 -- the "Background of the Invention" -- where the specification is alleged to make reference to "requests to stream a media file". Firstly, the

discussion referred to by the Examiner relates to the prior art, not the claimed invention. Secondly, although the paragraph referred to by the Examiner does make reference to streaming, it does not refer to a request. Thirdly, the interpretation of the claim phrases relied on by Examiner is not supported by "Detailed Description of the Invention", unlike the interpretation relied on by Appellant. In this regard, the specification at page 11, paragraph 4 states:

> The web browser 122 composes an *HTTP request for a particular media content file* and sends it to the web client's network interface 124 (arrow 150). A user clicking an HTML document link may initiate this action. Alternatively a user may initiate this action by typing the request URL into the browser URL input field. Please note that *the request URL points to the media file itself, and neither to a streaming metafile* nor a CGI/Java Servlet program component. (Emphasis added.)

Thus, the interpretation of the claim phrases relied upon by the Examiner (i.e., the request is *with regard or respect to* a particular media file) is inconsistent with the description of the invention in the specification, as well as being unreasonably broad in view of the clear and unambiguous meaning of the claim phrases. On the other hand, the interpretation of the claim phrases relied upon by the Appellant (i.e., the request is *to acquire, or download*, the actual media file) is consistent both with the description of the invention in the specification and the clear and unambiguous meaning of the claim phrases. The RTSP DESCRIBE request disclosed in the Klemets et al. reference is clearly not a request *to acquire, or download*, the actual media file as required by each of independent claims 1, 11 and 18. Rather, the RTSP DESCRIBE request disclosed in the Klemets et al. reference is merely a request from the client to the server to describe the available content. See, Klemets et al., page 2, paragraph [0015] and paragraph [0016]; and page 4, paragraph [0041].

Conclusion

The Appellant respectfully submits that claims 1-7 and 11-18 are patentable over the cited art references, and the rejections thereof under 35 U.S.C. 102(e) and 35 U.S.C. 103(a) should be reversed for the reasons set forth herein and in the Appeal Brief filed December 19, 2007.

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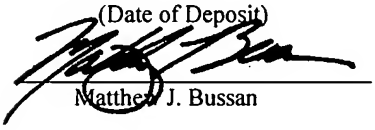
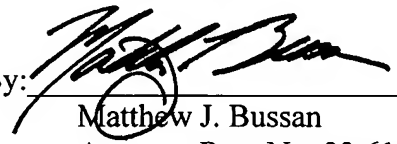


Matthew J. Bussan

Respectfully submitted,

By: 

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